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10 Attorneys for Plaintiffs and Counter-Defendants

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

14 SERENDIP LLC & WENDY  
15 CARLOS,

16 Plaintiffs,

17 v.

18 WARNER BROS. ENTERTAINMENT  
19 INC.,

20 Defendant.

22 WARNER BROS. ENTERTAINMENT  
23 INC.,

24 Counter-Claimant,

25 v.

26 SERENDIP LLC & WENDY  
27 CARLOS,

28 Counter-Defendants.

CASE NO. CV 08-07739 RGK (RCx)

The Honorable R. Gary Klausner

**PLAINTIFFS'**  
**NOTICE OF MOTION**  
**AND MOTION *IN LIMINE***

Date: January 19, 2010

Time: 9:00 a.m.

Place: Courtroom 850  
255 E. Temple St.  
Los Angeles, CA

1 TO DEFENDANT AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 19, 2010 at 9:00 a.m. in the  
3 Courtroom of the Hon. R. Gary Klausner of the above-referenced Court, located  
4 at 255 East Temple Street, Los Angeles, CA, plaintiffs will move for rulings *in*  
5 *limine* addressed to the trial of this matter as follows:

6 1. Declaring that the defendant's expert, Edward Pierson, not be permitted to  
7 testify other than as to the measure of damages in response to the plaintiff's  
8 damages expert.

9 2. Forbidding the defendant to refer to the plaintiff, Wendy Carlos, as Walter  
10 Carlos, which ruling shall include historical references to Ms. Carlos at the time  
11 she was known as Walter Carlos.

12 This motion is made following telephone conference with opposing counsel  
13 pursuant to Local Rule 7-3 on November 13, 2009.

14 This motion is based upon this notice of motion, the attached declaration of  
15 Frederick H. Cohn, and exhibits thereto, the accompanying Memorandum of  
16 Points and Authorities, all pleadings and papers on file in this action, and upon  
17 such other matters as may be presented to the Court at the time of the hearing.

18  
19 Dated: December 4, 2009

Respectfully submitted,

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23 Frederick H. Cohn  
24 Attorney for Plaintiffs and  
25 Counter-Defendants  
26 Serendip LLC & Wendy Carlos  
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**DECLARATION OF FREDERICK H. COHN**

1 Frederick H. Cohn, an attorney admitted *pro haec vice* in this case, declares and  
2 states as follows:  
3

4 1. I am trial counsel in the above entitled matter. I make this declaration in  
5 support of our motion *in limine* seeking relief on two matters.  
6

7 2. This litigation, although it has multiple causes of action, largely hinges on  
8 construction of a contract entered into on or about June 1, 1971 between  
9 predecessors of the plaintiff (Serendip) and the defendant (Warner Bros.).  
10

11 It is this contract which gives rise to both applications for relief. The first is to  
12 forbid testimony by Edward Pierson whom the defense seeks to have opine on  
13 the meaning of the contract in question. (Pierson's declaration submitted in the  
14 defendant's opposition to the plaintiff's motion for summary judgement is  
15 attached as Exhibit B).  
16

17 3. Plaintiff opposes his testimony for the reasons set forth in the memorandum  
18 of law which is filed concurrently.  
19

20 4. Secondly we seek to prevent a nascent appeal to prejudice. One of  
21 the plaintiffs is Wendy Carlos. She sues individually and is a member of  
22 Serendip. She is referred to in Exhibit A (Page 1, Page 8 paragraph 16) and is a  
23 signatory to the agreement *sub nom* Walter Carlos.  
24

25 5. Ms. Carlos was transgendered. She has been known, professionally and in  
26 her private life as Wendy Carlos for decades. There was no deception in the  
27  
28

1 change of her name and her former gender and name are known throughout the  
2 music and film industry.

3 6. Out of concern that jurors might have a bias against Ms. Carlos' lifestyle or  
4 the choices that her name change indicate that she made, I requested that  
5 defendants forego reference to Walter Carlos in the trial. Counsel has indicated  
6 to me that there would be no such forbearance. A copy of the e-mail from Linda  
7 Burrow to me in that regard is included as Exhibit C.  
8

9 7. We respectfully suggest that the Court not permit reference to Walter  
10 Carlos. (See memorandum of law, Point II).  
11

12 I declare under penalty of perjury under the laws of the United States of  
13 America that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of  
14 December, 2009 at New York, New York.  
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Frederick H. Cohn  
Attorney for the plaintiffs  
Serendip, LLC and  
Wendy Carlos

# EXHIBIT A

*file*  
*Chambers*  
June 1, 1971 *Chambers*

TRANS-ELECTRONIC MUSIC PRODUCTIONS, INC. (hereinafter referred  
133 West 87th Street to as "TEMPI")  
New York, N. Y. 10024

Attn: Mrs. Rachel Elkind

Gentlemen:

You represent and warrant that you are the owners of or control all necessary rights in and to master recordings of the musical selections entitled "Timesteps" and "Beethoven's Ninth Symphony" (hereinafter called "Existing Music") as arranged and recorded by Walter Carlos utilizing the so-called "Moog Synthesizer."

Polaris Productions, Inc. (herein called "Polaris") is producing a motion picture photoplay presently entitled "A Clockwork Orange" (herein called the "Photoplay") and desires to obtain the right to re-record the performances embodied in said master recordings (hereinafter called "Masters") and in addition desires to obtain from you new and original musical compositions written and arranged by Walter Carlos and performed by Walter Carlos on the Moog Synthesizer, for use in and in connection with the sound track of the Photoplay.

This will confirm the agreement between you and Polaris as follows:

1. At your sole cost and expense and on dates to be mutually agreed upon by you and Polaris, you agree to cause Walter Carlos to write and prepare arrangements of new and original musical selections as Polaris may require and to perform on the Moog Synthesizer and record on master recordings said new and original musical selections. The said new and original musical compositions to be written, arranged and

*cc. Boyd*  
*10-28-71*  
*Chambers*  
*1-11-72*

Ex. A

formed on the Moog Synthesizer by Walter Carlos are hereinafter referred to as "New Music."

2. You hereby give and grant to Polaris and Polaris shall have the right, but not the obligation, to re-record the performances from the Masters of the Existing Music and the New Music on the sound track of the Photoplay and Polaris shall have the sole and exclusive synchronization rights to be exercised in connection with the re-recording of the Existing Music and the New Music, or any part or parts thereof, in the Photoplay, and its air, screen and television trailers and furthermore the unqualified and unrestricted right to publicly perform the same everywhere, for profit or otherwise and by all means and methods now or later known, free of any obligation to pay any fees of any kind to Walter Carlos or any other person or corporation.

3. You agree to make available to Polaris magnetic tape copies of the Masters of the Existing Music and the New Music suitable for use in transferring the performances of the Existing Music and the New Music to the sound track of the Photoplay.

4. You represent and warrant that you have all necessary rights in and to results and proceeds of the services of Walter Carlos and any other person or corporation who rendered services in connection with the writing, arranging and recording of the said Masters and you shall bear and be solely responsible for the payment of any and all costs of any kind and nature arising out of the manufacture and production of the said Masters.

5. Polaris shall bear and shall be solely responsible for the payment of all costs arising out of the re-recording, assembly and handling of the said Masters and the transferring of the Existing Music and the New Music from the Masters to the



sound track of the Photoplay.

6. In addition to the aforesaid right to use the Masters to the Existing Music and the New Music for and in connection with the sound track of the Photoplay, you hereby give and grant to Polaris for an unlimited period of time the non-exclusive license, privilege and right (a) to make master recordings embodying all or portions of the sound track of the Photoplay and any portion of the Existing Music or New Music written hereunder <sup>and not</sup> actually used in the sound track of the Photoplay as finally released, and to manufacture, distribute, publically perform, issue and sell so-called long-playing sound track recordings (hereinafter referred to as "Albums") of the music contained in the score of the Photoplay in all forms and devices for the reproduction of sound whether or not now known or contemplated (and including any device where sound is combined with pictures) throughout the world and the universe; and (b) to use the name, likeness and biography of Walter Carlos in connection with the advertising, publicizing or sale of the Albums, said right to be non-exclusive.

7. Polaris, its assignees and licensees shall bear and be solely responsible for the payment of all costs arising out of the manufacture, production, distribution and release of the Albums, including the cost of the transfer of the sound track of the Photoplay to such master recordings used for the production of the Albums as shall be prepared by Polaris or its assignees and licensees and for delivery, assembly and handling of the sound track of the Photoplay for such purposes.

8. In the event that Polaris shall find it necessary to and shall make re-recordings of all or any portion of the sound track of the Photoplay, you hereby grant to Polaris the right to make such re-recordings as shall be necessary, provided that Polaris shall make all payments required to be made to any persons or corporations rendering such services in connection

with such re-recordings.

9. In consideration of the license and rights herein granted to Polaris by you and for all your undertakings pursuant hereto, Polaris agrees to pay to you the following compensation and royalties with respect to the Existing Music, the New Music and the said Albums:

(a) To pay to you as a synchronization fee for the right to use the Existing Music and the New Music in and in connection with the sound track of the Photoplay the following amounts:

(i) The sum of \$500.00 for up to 30 minutes of New Music;

(ii) The sum of \$50.00 per minute for each minute of the Existing Music actually used in the sound track of the Photoplay as finally released.

(b) To pay to you for and on account of the exploitation in the form of Albums of the Existing Music and the New Music, royalties as follows:

(i) A royalty of 10% of the retail list price (excluding taxes and the recording company's standard charges for containers in which such Albums are sold, if any) on 90% of all such Albums manufactured and sold in the United States, its territories and possessions. If any Existing Music or New Music by Walter Carlos in the sound track of the Photoplay is included with other musical compositions of the Photoplay or with any other recordings not contained in the Photoplay, then instead of the royalties set forth above you shall be entitled to receive such pro rata share of such royalties in the proportion that the playing time of the Existing Music and New Music performed by Walter Carlos bears to the total playing time of such record Albums.

(ii) A royalty for Albums sold outside the United States, its territories and possessions of one-half of the royalty hereinbefore specified based upon the retail list price (excluding taxes and the recording company's standard charges for the cost of containers in which such Albums are sold, if any) in the country of manufacture, the United States, England, or the country of sale, at Polaris's election, on 90% of all such Albums manufactured and sold, such royalties to be computed in the national currency of the country to which the list price so elected applies. Such royalties hereunder shall be due and payable only after payment has been received by Polaris in the United States and shall be paid at the same rate of exchange as Polaris was paid. If Polaris does not receive payment in the United States in dollars and elects to accept payment in a foreign currency, Polaris may deposit to your credit, and at your expense, in such currency in a depository selected by you, your royalties based upon payments so received by Polaris in a foreign currency as royalties hereunder and shall notify you thereof promptly. Such deposit as stated above shall fulfill Polaris's obligation hereunder as to Album sales as to which the royalties so deposited shall be applicable.

(iii) As to Albums sold through mail order record clubs or similar sales plans or devices and as to Albums sold for promotional, sales incentive or educational purposes or in the form of pre-recorded tape (in reel-to-reel, cartridge or other form), a royalty of one-half (1/2) the royalty rate otherwise payable; provided, however, that no royalty shall be payable with respect to Albums given to members of record clubs as "bonus" or "free" Albums as a result of joining the club, obtaining new members or purchasing a required number of albums. No royalty shall be payable with respect to Albums given away

or furnished on a no-charge basis to disc jockeys, radio stations, dealers or others, or sold as "cut-outs" after the listing of such album has been deleted from the catalogue of Polaris, its subsidiaries, affiliates or licensees.

(b) In computing the number of Albums manufactured and sold hereunder, Polaris shall have the right to deduct returns and credits of any nature, including, without limitation, those on account of 100% or lesser return privilege, defective merchandise, exchange privilege, promotional credits, errors in billing, usable overstock and errors in shipment.

(c) Statements shall be rendered and payments shall be made on account of royalties, if any, accruing to you hereunder on a semi-annual basis after the release of any Album containing the Existing Music or New Music. [The semi-annual periods of six (6) consecutive months each shall be from January 1st to June 30th and July 1st to December 31st.] Each statement shall be rendered within the period of sixty (60) days following the close of the semi-annual period to which it relates and shall be accompanied by a remittance of the amount accrued to you on the basis of receipts during such semi-annual period as indicated in such statement. Any statement rendered shall become final and binding upon you unless specific objection in writing is made within twelve (12) months from the date the same shall be delivered to you. X

10. Polaris shall have the right to and shall include on the Album containers credit to Walter Carlos in such form, size and location as Polaris shall determine in its sole discretion. [However, in the event any other composer or performer shall receive credit on the front cover, a credit line in the same size typeface shall also be given to Walter Carlos. In addition, the

credit line on the liner note shall read "Composed, arranged and performed by Walter Carlos. Produced by Rachel Elkind for TEMPI."

11. Notwithstanding the sole and exclusive synchronization rights in and to the Existing Music and the New Music granted to Polaris herein for use in the Photoplay, it is understood and agreed that you may grant the right to Columbia Record Corporation or another person, firm or corporation to use the Existing Music or the New Music in record Albums to be manufactured and distributed by Columbia Record Corporation or another person, firm or corporation; provided, however, that such other Albums containing all or any part of the Existing Music or the New Music shall not be released anywhere in the world earlier than four (4) months from and after the initial distribution in the United States of the Albums hereunder. In connection with other Albums issued by Columbia Record Corporation or any other person, firm or corporation, it is understood and agreed that any designation or reference to "A Clockwork Orange" in publicity or advertising on the jackets or Album covers of such Albums shall be subject to Polaris's right of prior written approval, [which approval shall not be unreasonably withheld.]

12. This agreement, its validity, construction and effect, shall be governed by the laws of the State of California applicable to agreements made and to be performed therein.

13. Any notices which you or Polaris may desire or may be required to give to the other in connection herewith shall be given by addressing the same to you at the address first above written and to Polaris at 9777 Wilshire Boulevard, Suite 918, Beverly Hills, California 90212, or at such other address as may be designated by you or Polaris by written notice and by depositing the same so addressed, postage prepaid, in

the United States mail or by delivering the same, toll prepaid, to a telegraph or cable company or by delivering the same personally to one of your officers or a Polaris officer.

14. Polaris shall have the right to assign this agreement or all of its rights hereunder to Warner Bros. or any Kinney affiliated record company; provided, however, that any such assignment shall be contingent upon Polaris causing such assignee to assume Polaris's obligations hereunder.

15. You represent and warrant that you have the full right and power to make this agreement and to grant the rights herein granted to Polaris and that you have not heretofore nor will you hereafter do any act or thing which will or may tend to derogate from, impair, prejudice or diminish any right or license granted Polaris hereunder. You agree to indemnify and hold Polaris and its officers, directors, employees, successors and assigns (herein "Indemnitees") harmless from and against any and all loss, cost, damage, liability and/or expense suffered or incurred by or threatened against said Indemnitees, or any of them (including reasonable attorney's fees) arising from or related to any breach or alleged breach by you of any agreement, representation or warranty hereunder.

16. If required by Polaris, you agree to require Walter Carlos [and Rachel Elkind] to report to Polaris at a site in England [for consultation and he shall be required to render services hereunder in composing the New Music at TEMPI's studios in New York]. Polaris agrees to provide Walter Carlos [and Rachel Elkind] with round-trip transportation from New York City to the site in England and agrees to pay or reimburse Walter Carlos and Rachel Elkind their reasonable living expenses while away from New York pursuant to the request of Polaris hereunder. X

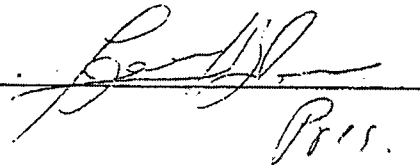
17. This agreement sets forth the entire agreement X

between the parties with respect to the subject matter hereunder, and no modification, amendment, waiver, termination or discharge of this agreement of any of the provisions hereof shall be binding upon either party unless confirmed by written instrument signed by an officer of the party to be bound.

Please indicate your agreement to the foregoing by signing in the space provided below.

Very truly yours,

POLARIS PRODUCTIONS, INC.

By   
Priss.

Agreed and accepted:

TRANS ELECTRONIC MUSIC PRODUCTIONS, INC.

By 

Agreed and accepted:

  
WALTER CARLOS

# EXHIBIT B



Case 2:08-cv-07739-RGK-RC Document 56 Filed 11/16/2009 Page 1 of 6

1 CALDWELL LESLIE & PROCTOR, PC  
 2 CHRISTOPHER G. CALDWELL, SBN 106790  
 3 Email: caldwell@caldwell-leslie.com  
 4 LINDA M. BURROW, SBN 194668  
 5 Email: burrow@caldwell-leslie.com  
 6 TINA WONG, SBN 250214  
 7 Email: wong@caldwell-leslie.com  
 8 1000 Wilshire Blvd., Suite 600  
 9 Los Angeles, California 90017-2463  
 10 Telephone (213) 629-9040  
 11 Facsimile (213) 629-9022

12 Attorneys for Defendant and Counter-claimant  
 13 WARNER BROS. ENTERTAINMENT INC.

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

SERENDIP LLC & WENDY  
 CARLOS,

Plaintiffs,

v.

WARNER BROS.  
 ENTERTAINMENT INC.,

Defendant.

CASE NO. CV 08-07739 RGK (RCx)

**DECLARATION OF EDWARD  
 PIERSON IN SUPPORT OF  
 WARNER BROS.  
 ENTERTAINMENT INC.'S  
 OPPOSITION TO PLAINTIFFS'  
 MOTION FOR PARTIAL  
 SUMMARY JUDGMENT**

WARNER BROS.  
 ENTERTAINMENT INC.

Counter-claimant,

v.

SERENDIP LLC, a New York limited  
 liability company, and WENDY  
 CARLOS, an individual,

Counter-defendants

[Defendant Warner Bros. Entertainment Inc.'s Opposition to Plaintiffs' Motion for Partial Summary Judgment; Statement of Genuine Issues of Fact and Additional Material Facts; Evidentiary Objections; Declaration of Linda M. Burrow and Exhibits Thereto filed concurrently herewith]

[[Proposed] Order Denying Plaintiffs' Motion for Partial Summary Judgment lodged concurrently herewith]

Date: November 30, 2009  
 Time: 9:00 a.m.  
 Courtroom: 850

**DECLARATION OF EDWARD PIERSON**

I, Edward Pierson, declare and state:

1. I am currently Adjunct Professor of Law at Southwestern Law School in Los Angeles California, where I have taught the course "Entertainment Law" for the past 18 years. I also serve on the School's Entertainment and Law Institute's International Advisory Board. I have been retained by Warner Bros. Entertainment, Inc. as an expert witness in this action. I make this declaration based upon my personal knowledge and expertise. If called to testify, I could and will testify competently thereto.

2. I am co-author of the casebook "Law and Business of the Entertainment Industries", widely used in law schools across the country and published in its Fifth Edition by Praeger Publishers. I began co-authoring this casebook over twenty years ago. The casebook covers Music Publishing, Recorded Music and Film among other topics.

3. I was the Executive Vice President, Legal and Business Affairs and General Counsel of Warner/Chappell Music from 2000 to 2008 in a role that expanded my duties as the chief legal counsel of the music publishing company I joined in 1989 and worked in the Legal and Business Affairs department for 19 years. In my position as General Counsel, I oversaw all aspects of the company's legal affairs (drafting of agreements, overseeing of claims, licensing agreement forms and settlement of licensing claims, worldwide copyright enforcement and litigation matters) as well as the company's business affairs (contract formulation, negotiation and administration). In the course of my work at Warner/Chappell, I handled major negotiations for music publishing rights with film studios including Warner Bros, New Line Cinema and Lucasfilm , as well as videogame companies including Microsoft, which included review and knowledge of composer, synchronization and music license agreements for numerous films, TV programs and games including the John Williams composed Star Wars and

1 “Indiana Jones” soundtracks, the “Lord of the Rings” soundtracks and the “Halo”  
2 and “Fable” game soundtracks.

3 4. In October 2008, I received The American Bar Association Forum  
4 on the Entertainment and Sports Industries’ Ed Rubin Service Award for  
5 exemplary service and leadership at its annual meeting. I have served as the  
6 Chairperson of the American Bar Association Forum Committee on the  
7 Entertainment and Sports Industries and was also the Chair of its Music and  
8 Personal Appearances Division.

9 5. I opened a private law practice in 1978 specializing in entertainment  
10 and intellectual property law in Denver, Colorado and practiced there until 1989.  
11 A Phi Beta Kappa honor graduate of the University of Denver (BA, 1975), I  
12 earned my law degree from the University Of Denver College Of Law (JD, 1977)  
13 and I am an active member of the Colorado Bar. Prior to 1989, I was an  
14 Assistant Adjunct Professor of Law at the University Of Denver College Of Law  
15 where I also taught Entertainment Law.

16 6. Presently, I am a consultant in the music and video game industry  
17 and over the past twelve months my client list has included a major technology  
18 company that retained my services to advise them on music licensing issues. My  
19 non-disclosure agreement with such company prevents me from revealing further  
20 details.

21 7. In preparation for this assignment I was provided with and read the  
22 Verified Amended Complaint (the “Complaint”) filed in the United States  
23 District Court for the Central District of California, titled Serendip LLC &  
24 Wendy Carlos vs. Warner Bros Entertainment Inc., an Agreement pertaining to  
25 music for “A Clockwork Orange” dated June 1, 1971 attached as Exhibit A to the  
26 Complaint, a Composer Loanout Agreement and side letter dated January 25,  
27 1980 in respect of music in “The Shining” (“Composer Agreement”), six (6)  
28 Synchronization and Master License Agreements from 2006 to 2009 in which

1 Serendip was the licensor and a copy of the Stanley Kubrick Directors' Series  
2 box set that includes the films in questions. Prior to this engagement, I had  
3 owned a copy of "Switched-On Bach" and have seen both "A Clockwork  
4 Orange" and "The Shining" and was unaware of any matters in dispute or  
5 discussion between the Plaintiff and Defendant until I read the aforementioned  
6 Complaint.

7 8. The introductory paragraphs and subsequent provisions of the  
8 Clockwork Orange Agreement evidence an agreement that was not a common  
9 form as alleged in Paragraph 7 of the Complaint. This Agreement combined a  
10 synchronization license, a master use license agreement and a soundtrack royalty  
11 agreement for an artist for compositions that were new original works as well as  
12 performances and arrangements of public domain works (e.g. Beethoven's Ninth  
13 Symphony"). Based upon my knowledge and experience of licensing agreements  
14 for music entered into during this time, the many agreements which were  
15 intended to include so-called "new media" rights did so by adding language to  
16 the grant of rights clause stating rights also included distribution and uses by  
17 "methods now or later known" or in "all media now or hereinafter devised".

18 9. Further in respect of the introductory paragraphs on page 1 of the  
19 Agreement, I believe the reference to "sound track" in paragraph 2 on page 1 is  
20 intended to include within its scope and encompass all uses in (and in connection  
21 with) the Photoplay (as distinguished from what is known as a "sound track  
22 recordings" referenced and referred to later in the Agreement and defined as  
23 "Albums" in Paragraph 6).

24 10. In respect of Paragraph 2 of the Agreement, which is the primary  
25 grant of rights clause, I believe Licensor granted to Licensee broad and extended  
26 rights by the specific language of such Paragraph 2. In particular the last 47  
27 words: "and furthermore the unqualified and unrestricted right to publicly  
28 perform the same everywhere, for profit or otherwise and by all means and

1 methods now or later known, free of any obligation to pay any fees of any kind to  
2 Walter Carlos or any other person or corporation". I believe the use and inclusion  
3 of "and" in the phrase "and by all means and methods now or later known"  
4 clearly evidences the intent of the parties to include all "methods" then or later  
5 known and not limited to public performance rights. Expansion of rights to new  
6 methods and new media by such language is and has been an expansion of the  
7 synchronization rights as opposed to expansion of performance rights. This  
8 opinion is based on my extensive experience reviewing and drafting many  
9 licenses for the past 30 years. Further, had the parties intended to restrict all new  
10 media rights in the grant, as some agreements then and now provide, it would  
11 have been accomplished by omitting the phrase "and furthermore the unqualified  
12 and unrestricted right to publicly perform the same everywhere, for profit or  
13 otherwise and by all means and methods now or later known, free of any  
14 obligation to pay any fees of any kind to Walter Carlos or any other person or  
15 corporation". Inclusion of this provision, in my opinion was not intended in any  
16 way to be limited to performance rights. Rather it was intended and included to  
17 extend to all prior rights granted including the synchronization right.

18 11. In respect of Paragraph 6 of the Agreement, I do not accept or agree  
19 with the Plaintiff's claim that sale of home video copies comes within the scope  
20 of sale of Albums for which Album Royalties should be paid under Paragraph 8  
21 of the Agreement. This royalty was clearly intended to include and was limited to  
22 "so called long-playing sound track recordings (hereinafter referred to as  
23 "Albums") of the music in the score of the Photoplay" and clearly not the  
24 Photoplay in a home video, DVD or any other format. In addition, the royalty  
25 obligation in Paragraph 8 (b) of the Agreement was clear as to its scope "for and  
26 on account of the exploitation in the form of albums" Moreover, the royalty  
27 provisions of Paragraph 8 are clearly customary phonorecord royalty provisions  
28 and it has not been industry custom, expectation or practice to pay so-called

1 phonorecord or Album Royalties to a composer or artist on video, DVD or  
2 downloaded copies of a film. A "long-playing sound track Album" is the scope of  
3 the royalty obligation in the Agreement and very different from the film with  
4 music embodied in it and distributed by other methods.

5 12. In my experience in the Legal and Business Affairs Department of  
6 Warner/Chappell Music from 1989 to 2008, I have had substantial and extensive  
7 personal experience in the arena of amending music license agreements to  
8 provide for additional grants of rights to the licensee and pay additional fees to  
9 the licensor. Historically such arrangements are often the result of new  
10 technologies that may have not been contemplated at the time original rights were  
11 secured.

12 13. The common drafting protection to address this situation which  
13 licensees sought to include in their agreements was to include, in the grant of  
14 rights the phrase "in all media now known or hereafter devised" or similar  
15 language. It is my opinion that the phrase in this 1971 agreement "by all means  
16 and methods now or later known" in the grant of rights is significant, and  
17 indicative of the intent of the parties then that no additional fees be paid for  
18 delivery of the film by a new method (e.g. home video, DVD or internet).

19  
20 I declare under penalty of perjury under the laws of the United States of  
21 America that the foregoing is true and correct. Executed this 13 day of  
22 November, 2009 at Los Angeles, California

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26 Edward Pierson  
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# EXHIBIT C

**Subject:** Motion in Limine re: "Walter Carlos"

**From:** Linda Burrow <burrow@caldwell-leslie.com>

**Date:** Tue, 1 Dec 2009 16:35:15 -0800

**To:** "Frederick H. Cohn" <fcohn@frederickhcohn.com>

**CC:** "af102@nyc.rr.com" <af102@nyc.rr.com>, Tina Wong <wong@caldwell-leslie.com>

Fred –

Following up on our discussion prior to Dr. Einhorn's deposition, we respectfully decline your request that we agree not to refer to "Walter Carlos" at trial.

Linda

---

Linda M. Burrow

**Caldwell Leslie**

Caldwell Leslie & Proctor, PC  
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